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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:	)	
	)	
Request for Review by	)	CC Docket No. 96-45
General Communication, Inc. of	)	CC Docket No. 97-21
Decision of Universal Service Administrator	)	

REQUEST FOR REVIEW OF ADMINISTRATOR'S DECISION

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Dated: March 29, 2001

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REQUEST FOR REVIEW OF ADMINISTRATOR'S DECISION

Pursuant to Section 54.719(c) of the Commission's Rules, 47 C.F.R. §54.719(c), General Communication, Inc. ("GCI") requests the Commission to review the decision of the Schools and Libraries Committee ("S&L Committee") of the Universal Services Administrative Company ("USAC") denying GCI's appeal of decisions of the Schools and Libraries Division ("S&L Division") regarding recurring charges for Internet services provided to multiple schools in Alaska.[1] GCI's interest in this matter is as the provider of Internet services to the schools.

I. INTRODUCTION AND SUMMARY

By this request for review, GCI seeks consideration of its appeal to the S&L Committee. On July 1, 1999, GCI filed an appeal to the S&L Committee within 30 days after it received adequate, constitutional notice of the decisions of the S&L Division to deny partial funding for Year One of the Schools and Libraries Program. Even though GCI was clearly a "person aggrieved by an action taken by a division of the Administrator," 47 C.F.R. § 54.719(a), the S&L Committee recently has informed GCI that the appeal was treated as an appeal by an applicant

[1] This appeal, and the previous appeal to the S&L Committee, involve 83 separate funding requests. The issues are identical in each case. The full list of schools and funding request numbers that are the subject of the appeals is set out in the appeal to the S&L Committee and is incorporated herein by reference. A copy of that appeal is attached hereto as Exhibit 1.

and was denied as untimely for failure to meet the 30-day filing deadline.[2] The S&L Committee never provided GCI with a decision, or a copy of any decision, on its appeal. The S&L Committee's rejection of GCI's appeal violates GCI's rights to notice and opportunity to be heard as guaranteed by the United States Constitution.

In the July 1999 appeal, GCI sought review of the underlying S&L Division decisions to deny partial funding. On these issues, it is clear that the decisions of the S&L Division were incorrect. The basis for the S&L Division decisions has been unequivocally reversed by this Commission in other decisions. Therefore, GCI urges the Commission to remand this matter to the S&L Division with direction to approve funding for the Internet servers for the six month extension period for Program Year One for each of the Funding Request Numbers covered by the July 1999 appeal.

II. STATEMENT OF FACTS

GCI is a diversified telecommunications company that provides, among other things, Internet service to schools in Alaska. GCI was selected by numerous schools in Alaska to provide Internet service to their schools. GCI and the schools submitted all relevant documentation to the S&L Division,[3] and the services and connections were approved for "e-rate" funding. However, the S&L Division did not include funding for the services provided to the schools for the six month extension of Program Year One. As the provider of services to the subject schools and ultimate recipient of support for the services, GCI has a valid interest in the matter presented for review.

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[2] GCI still has not received a copy of the denials from the S&L Committee, and GCI has no independent information that the applicants received notice of the denial. Therefore, GCI neither admits or concedes that the denials were actually sent.

[3] Technically, at the time the documents were submitted the "division" was a separate corporation, the Schools and Libraries Corporation. Later, USAC was reorganized and the corporation became a division of USAC.

GCI's Internet service to the subject schools includes e-mail, data transmission, address translation, and other typical Internet services. In order to deliver the service, an Internet server owned by GCI is located on the school premises. The server is located on the school premises for several reasons. All of the subject schools are in extremely remote villages in rural Alaska, and neither GCI nor any other Internet Service Provider provides any Internet service in the village (other than the service to the school). Furthermore, the Internet service to the schools is delivered via satellite, and locating the server on the school premises greatly improves performance. GCI remotely manages the server and provides a help desk function. When the Form 471 pertaining to the service was submitted to the Schools and Libraries Corporation, the server was listed as an "internal connection" based on specific advice from the S&L Help Desk. The charge for the server-based service was included as a monthly recurring charge.

GCI received commitment letters from the S&L Division for each of the requests at issue. In each case, the commitment letters included the decision: "Funding Status: COMMITTED – FULL". The letters also contained the dollar amount committed, with the phrase "approved as submitted." The commitment letters did not indicate in any way that any portion of the funding request had been denied. An example of the funding commitment letters for the schools at issue is attached to the Appeal Letter to the S&L Committee as Exhibit A. Each of the funding commitment letters included the same language indicating "approved as submitted" and "COMMITTED – FULL".

Later, while GCI's accounting department was compiling the information in the commitment letters for billing and financial purposes, GCI discovered that the amounts set out in the commitment letters did not cover the full monthly recurring costs for the servers for the full

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For simplicity, GCI will refer to the S&L Division and Committee throughout the pleading, notwithstanding the fact

18 month period of the initial funding year. GCI did not understand why the amount did not cover the full 18 month period and promptly inquired to the staff of the S&L Division. GCI was informed that the funding amount was based on an FCC decision that the six month extension of Program Year One did not cover internal connections. GCI was further informed that only the FCC could change this decision.

Believing this explanation incorrect, GCI inquired further and was informed that, although the six month extension of Program Year One did cover internal connections, it did not allow the commitment of additional monies for internal connections beyond January 1, 1998. The explanation pointed out that recurring charges for telecommunications and Internet services did allow the commitment of additional monies, but that recurring charges for internal connections were treated differently. Paragraphs 12 and 13 of the Universal Service Fifth Order on Reconsideration, 13 FCC Rcd 14915 (1998), were cited in support of the interpretation. A copy of GCI's inquiries and the responses is attached to the Appeal Letter as Exhibit A.

After being provided with the foregoing explanation, GCI promptly and within 30 days filed an appeal to the S&L Committee on July 1, 1999. At the request of Staff of the S&L Committee, three months later, on September 1, 1999, GCI provided another copy of the July 1, 1999, appeal. The letter of September 1, 1999, included additional arguments explaining why GCI's appeal was filed on a timely basis. A copy of the September 1, 1999 letter is attached hereto as Exhibit 2.

GCI has never received a decision on its appeal. However, upon inquiry, on March 1, 2001, GCI was informed that GCI's appeal had been treated as "applicant appeals" and denied as untimely. The S&L Committee admitted that GCI had never been served with the decision and

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that for portions of the time it was actually a separate corporation.

that the decision failed to address GCI's arguments that its appeal had been timely filed under the circumstances.[4] A copy of the e-mail correspondence in which GCI was first informed that the appeal had been rejected, dated March 1, 2001, is attached hereto as Exhibit 3.

The foregoing facts, where not demonstrated by attached written documents, are supported by the affidavit of Martin Cary, GCI's Vice President of Broadband Services, attached hereto as Exhibit 4. Mr. Cary's department has been in charge of GCI's "e-rate" services to schools and libraries since the program began.

GCI now requests the Commission to review both the dismissal of its appeal as untimely and the decision not to fund all aspects of the Internet service provided by GCI during the six month extension of Program Year One.

III. QUESTIONS PRESENTED FOR REVIEW

1. Did the dismissal of GCI's appeal as untimely violate GCI's due process rights to adequate notice and opportunity to be heard? Goldberg v. Kelly, 397 U.S. 254 (1970); Memphis Light and Power v. Craft, 436 U.S. 1 (1978); Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950).

2. Did the handling of GCI's appeal as an "applicant's appeal" even though GCI itself was a "aggrieved by an action take by a division of the Administrator" violate the Commission's regulations and GCI's due process rights to adequate notice and opportunity to be heard? 47 C.F.R. § 54.719(a).

3. Should the servers that are owned by GCI and used to provide end to end Internet service have been classified as part of the Internet service, rather than as internal connections,

[4] As acknowledged in the e-mail from the S&L Committee, GCI had previously inquired from time to time regarding the status of its appeal. The issue of whether the appeal had been timely filed was mentioned as a possible problem, but GCI certainly had never before been given a decision.

and thus eligible for funding throughout the six month extension period of Program Year One? State of Tennessee (Order, In the Matter of Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, etc., Application No. 18132, August 11, 1999)

4. Even if the servers were appropriately classified as internal connections, were the recurring charges for the servers eligible for funding throughout the six month extension period of Program Year One. 47 C.F.R. § 54.507(b).

IV. ARGUMENT

A. Dismissal of GCI's Appeal to the S&L Committee as Untimely Violates GCI's Due Process Rights to Notice and Opportunity to be Heard.

In numerous cases, the United States Supreme Court has affirmed that constitutional due process requires notice adequate to apprise GCI of the basis of the decision that is subject to appeal. Notice must be "reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections." Memphis Light and Power v. Craft, 436 U.S. 1 (1978) (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950)). "The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" Id. at 14. "The notice must be of such nature as reasonably to convey the required information." Mullane, 339 U.S. at 314. For example, in Goldberg v. Kelly, 397 U.S. 254 (1970), the Supreme Court held that welfare recipients have the due process right to notice and an opportunity to be heard before termination of benefits, including "adequate notice detailing the reasons for a proposed termination." Id. at 267-268. The Court approved notice that "inform[s] a recipient of the precise questions raised about his continued eligibility." Id. at 268.

GCI, as an aggrieved party, had a right to appeal the decision of the S&L Division to the S&L Committee. See 47 C.F.R. §719(a). As established by the Supreme Court, such a right to appeal is meaningless without adequate notice to convey to GCI that an adverse decision had been made, and the reason for that decision. The funding commitment letters of the S&L Division, however, did not give GCI such notice. The letters did not reasonably inform GCI that funding had been partially denied, and they certainly did not inform GCI of the reason for the denial. To the contrary, the funding commitment letters did exactly the opposite. Every facet of the funding commitment letter led GCI, and would lead any reasonable person, to believe that the requests for funding had been approved in full. The letters informed GCI that the requests had been "approved as submitted" and that the funding status was "COMMITTED – FULL" (capitalization in original). The funding commitment letters simply gave GCI absolutely no notice of a decision to be appealed.

When GCI's own internal billing and bookkeeping procedures later uncovered a funding discrepancy, GCI did not know whether the discrepancy was related to clerical errors or significant substantive issues. GCI promptly inquired, but GCI initially was provided an incorrect answer which prompted a further inquiry. Upon further inquiry, GCI was provided the final explanation for the partial funding denial. GCI then promptly appealed, within 30 days of notice of the decision.

In summary, GCI did not receive constitutionally required adequate notice for purposes of appeal until it received an accurate explanation of the partial denial and why such funding had been denied. Prior to that explanation, appeal would have been impossible or futile. GCI simply did not know what it would have been asking the Committee to review — or, given the possibility of a clerical error in a commitment letter that reported "Funding Status:

COMMITTED – FULL" and "approved as submitted," that there was anything to review at all. Upon receipt of the accurate explanation of the partial denial and why such funding had been denied, GCI promptly filed its July 1, 1999 appeal to the S&L Committee.

Thus, GCI's appeal should have been considered by the S&L Committee on its merits. Dismissal of the appeal as untimely filed violated GCI's constitutional right to adequate notice as required by the Due Process Clause of the constitution.

B. The S&L Committee Improperly Treated GCI's Appeal as an Applicant's Appeal; GCI Timely Filed Its Appeal from the S&L Committee Decision.

By its own admission, the S&L Committee handled GCI's appeal as an "applicant's appeal," which the S&L Committee dismissed without even addressing arguments presented by GCI regarding the timeliness of the appeals. The S&L Committee never served or otherwise informed GCI of the disposition of the appeal until March 1, 2001. See Exhibit 3.

The S&L Committee's treatment of GCI's appeal as an "applicant's appeal" is entirely inconsistent with 47 C.F.R. § 54.719(a). That regulation gives any aggrieved party the right to file an appeal, and GCI is certainly an aggrieved party. By treating the appeal as an applicant's appeal and then failing to give GCI any notice whatsoever that the appeal had been denied, the S&L Committee violated the Commission's regulations and again failed to provide GCI with due process. There was absolutely no notice to GCI of the Committee's decision until March 1, 2001. GCI's instant appeal to the Commission of that decision is filed within 30 days of that date and is thus timely. 47 C.F.R. § 54.720.

The lengthy delay in bringing these issues to the Commission is clearly regrettable. However, given that the practices of the S&L Committee, rather than GCI's actions, is the cause for the delay, such delay should not prejudice GCI.

C. The S&L Division's Partial Denial of Funding Is Clearly Erroneous.

1. The S&L Division incorrectly categorized the servers as "internal connections;" the servers were simply part of the end to end Internet service provided by GCI.

In State of Tennessee, the Commission established criteria to determine where to draw the line between end-to-end Internet access service and internal connections. Order, 14 FCC Rcd 13734, 13753-55 (¶¶ 36-42) (1999). The Commission established a presumption that facilities located on a school campus are internal connections. However, the Commission also determined that this presumption could be rebutted with appropriate evidence of where the Internet access service actually begins and ends, and that in some cases the service provider may locate its point of presence for Internet access service at the school. The Commission also held that other indicia such as ownership of the facility used to provide the service, any lease-purchase arrangements, maintenance agreements and upfront capital costs should all be reviewed to determine whether the facilities are internal connections or part of the end to end Internet access service.

All of the criteria established by the Commission unquestionably prove that the servers at issue in this case were part of the end-to-end Internet access service provided by GCI. GCI located its point of presence for Internet access service at the schools for two reasons: there was no other Internet point of presence in these rural villages, and locating the point of presence for this satellite-delivered service significantly improves the performance. The servers have absolutely no function or purpose other than providing Internet service to the schools. The servers are not necessary (or even used) to transport information within the schools. The schools' internal networks are separate from, and do not rely in any way upon, the servers. The servers do not provide any internal service such as file or print services. GCI, not the schools, owns the servers. There is no lease-purchase arrangement. GCI maintains the servers as part of

the service. The schools did not pay any upfront capital costs for the servers. As is normally the case for services, the charge for Internet servers is a monthly recurring charges.

Thus, under the criteria laid out in State of Tennessee, it is clear that the servers were not internal connections but were part of the end-to-end Internet access service provided by GCI. The fact that the servers were listed as an internal connections on Form 471 does not compel a different result. The servers were listed as internal connections based on specific advice from the Help Desk of the S&L Corporation, and that direction should not prejudice GCI or the affected schools. Furthermore, the Form 471s were submitted before the Commission established rules affecting funding priority and before the schools could have known the importance of accurately classifying services as communications or internet services versus internal connections. The Commission recognized in numerous decisions that in such circumstances there should be an opportunity to change the "internal connection" designation. See Williamsburg-James City County Public Schools, Order, 14 FCC Rcd 20152 (1999); Sparta Area School District, Order, 15 FCC Rcd 8384 (Com. Car. Bur. 1999); Our Lady of Mercy School, Order, 15 FCC Rcd 1675 (Com. Car. Bur. 1999); Yelm Community Schools, File No. SLD-109156, Order, DA 99-2538 (rel. Nov. 16, 1999); Mifflin County Library, Order, 15 FCC Rcd 1673 (Com. Car. Bur. 1999).[5]

In summary, the servers were part of the end-to-end Internet access service provided by GCI to the schools. Recurring charges for Internet service were eligible for funding during the

[5] The cited cases involve situations where the schools were initially denied funding for priority two services (internal connections) because there was insufficient funds to cover all priority two services and the "need level" of the schools fell below the 70% cut-off level. The present situations differs very slightly in that the schools were denied funding for priority two services because of the rules applicable for the six month extension of Program Year One. Nonetheless, the principle is the exact same: the schools could not have been aware of the need to carefully distinguish between services later categorized as priority one and priority two. Furthermore, as discussed below, the S&L division also misapplied the Commission rule regarding funding during the six month extension of Program Year One.

six month extension of Program Year One. The S&L Division's decision denying such funding should be reversed.

2. Even if classified as internal connections, the recurring charges for servers should have been funded during the six month extension of Program Year One.

In rejecting funding for the recurring charges for the servers during the six month extension period, the S&L Division specifically relied on the Universal Service Fifth Order on Reconsideration, 13 FCC Rcd 14915 (1998). In that Order, the Commission extended Program Year One for an additional six months, ruled that discounts on recurring charges for telecommunications services and Internet services would be funded at the appropriate monthly level for the additional six months, and ruled that non-recurring charges for internal connections would be funded at the approved amount, but that the funds could be spent during the extension period.

In reaching its decision that recurring charges for internal connections could not be funding at the appropriate monthly level for the six month extension period, the S&L Division incorrectly extended the logic and holding of the Fifth Order on Reconsideration with respect to recurring charges for telecommunications and internet services and non-recurring charges for internal connections, to recurring charges for internal connections. The Commission, however, filled that gap in its subsequent Universal Service Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999), addressing the issue entirely in terms of "recurring" and "nonrecurring." The amendment to the applicable rule that was adopted by the Commission, 47 C.F.R. § 54.507(b), further confirms that the appropriate distinction is between "recurring" versus "non-recurring" and not between telecommunication and Internet services versus internal connections.

In this case, the charge for the servers was a monthly recurring charge. Thus, whether or not the servers were characterized as internal connections, the recurring charge for the server was

eligible for appropriate funding during the six month extension period, through June 30, 1999. The decision of the S&L Division to the contrary should be reversed.

V. RELIEF REQUESTED

GCI requests the Commission to remand this matter to the S&L Division with directions to approve funding for the Internet servers for the six month extension period for Program Year One for all of the appealed Funding Request Numbers. GCI further requests the Commission to effectuate this decision by waiving any rules as necessary to issue funding for Program Year One at this time. The Commission has authority to grant the requested relief pursuant to 47 C.F.R. §§ 0.91, 0.291, and 54.722(a).

Respectfully submitted,

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Attorney for
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Dated: March 29, 2001

EXHIBIT 1

July 1, 1999

Schools and Libraries Committee
Universal Service Administrative Co.
2120 L Street NW, Suite 600
Washington, D.C. 20037

Schools and Libraries Committee
Box 125, Correspondence Unit
100 South Jefferson Rd.
Whippany, NJ 07981

RE: Appeal of Funding Decisions

Dear Schools and Libraries Committee:

General Communication, Inc., (GCI) appeals the decision(s) of the Schools and Libraries (S&L) Division of the Universal Services Administrative Company regarding recurring charges for certain services which the Division classified as internal connections. The Funding Request Numbers of the applications at issue are set out below.[1] All of the cases involve common facts and common issues.

[1] The decisions at issue involve Funding Request Number (FRN) 117411 of Mentasta Lake School; FRN 117391 of Tok School; FRN 117460 of Tetlin School; FRN 73774 of False Pass School; FRN 36679 of Aniguiin School; FRN 36746 of Andrews School; FRN 36784 of Brevig Mission School; FRN 36848 of Gambell School; FRN 68750 of Kingeekuk Memorial School; FRN 68798 of Isabell School; FRN 69314 of Kingikmiut School; FRN 68877 of Koyuk Malemut School; FRN 68913 of Olson School; FRN 69024 of Shaktoolik School; FRN 69087 of Shishmaref School; FRN 69134 of Tukumgalinguq School; FRN 69265 of Unalakleet Elementary and Degnan High School; FRN 70369 of White Mountain School; FRN 34646 of Healy Lake School; FRN 34496 of Fort Greely Elementary School; FRN 13193 of Blackwell ISchool; FRN 13236 of David Louis Memorial School; FRN 13252 of Holy Cross School; FRN 13274 of Innoko River School; FRN 13186 of Lake Minchuminia Community School; FRN 13262 of Lime Village School; FRN 13265 of McGrath Elementary and High School; FRN 13279 of Takotna Community School; FRN 13269 of Top Of The Kuskokwim School; FRN 11520 of King Salmon School; FRN 107386 of Emmonak School; FRN 107407 of Hooper Bay School; FRN 160826 of Kotlik School; FRN 160833 of Marshall School; FRN 160841 of Mountain Village Shool; FRN 160852 of Pilot Station School; FRN 160867 of Pitkas Point School; FRN 160873 of Russian Mission School; FRN 14411 of Mount Edgecomb School; FRN 124643 of Nenana Public School; FRN 25033 of Northwest Arctic Borough School District; FRN 24911 of Ambler School; FRN 24959 of Buckland School; FRIN 24962 of Deering School; FRN 24968 of Kiana Elementary School; FRN 24972 of Kobuk School; FRN 24980 of McQueen Elementary School; FRN 24982 of Napaaqtugmiut School; FRN 24984 of Noorvik Elementary School; FRN 24987 of Shungnak School; FRN 36338 of Aleknagik School; FRN 36431 of Clarks Point

GCI requests the Schools and Libraries Committee to review the decision of the Schools and Libraries Division, as provided for at 47 CFR §54.719(a).

GCI is a diversified telecommunications company which provides, among other things, Internet services to schools in Alaska. GCI was selected by numerous schools in Alaska to provide various services, including Internet service, to their school. GCI and the schools submitted all relevant documentation to the Schools and Libraries Corporation, and the service and connections were approved for "e-rate" funding. The Schools and Libraries Division has now issued decisions which reduce the amount of e-rate funding for the services provided to the subject schools. GCI, as the provider of services to the subject schools and recipient of support for the services, has a valid interest in the matter presented for review.

GCI's Internet service to the subject schools includes e-mail, data transmission, address translation, filtering, and other typical Internet services. In order to deliver the service, an Internet server, owned by GCI, is located on the school premises. The Internet server is located on the school premises because the Internet service is delivered via satellite and locating the server on school premises greatly improves performance. GCI remotely manages the server and provides a help desk function to the schools. When Form 471 was submitted to the Schools and Libraries Corporation, the server was listed as an "internal connection" based on advice from the S&L Help Desk. The charge for the server was listed as a monthly recurring charge.

GCI received commitment letters from the Schools and Libraries Division for each of the requests at issue. In each case, the commitment letters included the following information: "Funding Status: COMMITTED - FULL". The commitment letters did not indicate than any portions of the request had been denied. An example of the funding commitment letters for these schools is attached.

While GCI was later compiling the information in the commitment letters for billing and financial purposes, GCI discovered that the amounts set out in the letters did not cover the monthly recurring cost of the internal connections for the

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School; FRN 36599 of Southwest Region School District; FRN 36635 of Koliganek School; FRN 36701 of Manokotak School; FRN 36739 of New Stuyahok School; FRN 36772 of Portage Creek School; FRN 36832 of Togiak School; FRN 36868 of Twin Hills /School; FRN 36911 of Ekwok School; FRN 12379 of Tanana City School District; FRN 98051 of Fort Yukon District Office; FRN 98185 of Arctic Village Elementary and High School; FRN 98108 of Beaver Cruikshank School; FRN 98113 of Birch Creek School; FRN 98125 of Central School; FRN 98189 of Circle School; FRN 98152 of Northern Lights School; FRN 98183 of Rampart School; FRN 98166 of Stevens Village School; FRN 98141 of Venetie High School; FRN 70673 of Allakaket School; FRN 704999 of Bettles Field School; FRN 70423 of Demoski School; FRN 70865 of District Office Yukon Koykuk; FRN 70983 of Hughes School; FRN 71002 of Huntington School; FRN 71035 of Kaltag School; FRN 71055 of Kangas Schoool; FRN 70925 of Manley Hot Springs Gladys Dart School; FRN 71081 of Minto School; FRN 70902 of Vemeti School; FRN of 19930 of Yupit School District

full 18 month period of the initial funding year. GCI had no information why the full 18 month period was not covered.

Upon inquiry to staff of the S&L Division, GCI was initially informed that the funding amount was based on the direct application of an FCC decision that the six month extension did not cover internal connections. GCI was further informed that only the FCC could change the decision.

Upon further inquiry, GCI received further explanation that although the FCC's six month extension did cover internal connections, it did not allow the commitment for any additional monies for recurring charges for internal connection beyond January 1, 1998. The explanation pointed out that recurring charges for telecommunications and Internet service did allow the commitment of additional monies, but that recurring charges for internal connections were treated differently. Paragraphs 12 and 13 of the FCC's Fifth Reconsideration Order, FCC 98-120, were cited in support of the interpretation. A copy of the inquiries of GCI and the responses is attached.

GCI files this appeal of the foregoing decision, and the prior commitment letters. GCI requests review of the S&L Division's decision by the S&L Committee.[2] The decision of the Division incorrectly applies the logic of the FCC decision and ignores the actual rule change which was adopted by the FCC. Further, the initial direction of the Division to classify the server as an internal connection was incorrect; classification of the server as part of the Internet service makes it eligible for additional monies during the six month extension period.

In its Fifth Order on Reconsideration, Fourth Report and Order, the FCC decided to adjust the funding year for S&L support by extending the initial funding "year" by six months, so that it would end June 30, 1999 rather than December 31, 1998. After making the decision that the initial funding year would be extended, the FCC explained in ¶¶ 12-13 how the change would be accomplished. The FCC stated that, first, discounts for telecommunications services and Internet services would be funded at the approved monthly level, consistent with the applications, through June 30, 1999. The FCC specifically stated that this approach was reasonable because telecommunications and Internet services are provided and billed at monthly intervals. The FCC stated that, second, discounts on internal connections would be funded at "the approved amount of support", and that the funds could be used during the remainder of 1998 and during the six month extension period. The FCC stated that this was reasonable because installation of

[2] This appeal is timely filed. The actual basis of the decision of the Division was first communicationed to GCI on June 24, 1999. Prior to that time, GCI was unable to file this appeal because GCI did not know what it would have been asking the Committee to reveiw. The funding committment letters themselves did not indicate any decision which GCI would have known needed to be appealed.

internal connections entail nonrecurring, rather than recurring, charges and because many installations could better occur during the summer months.

In reaching its conclusion that recurring charges for internal interconnections are not supported for the six month period through June 30, 1999, the Division has incorrectly extended the FCC's actual decision. In that Order, the FCC simply did not address how recurring charges for internal connections should be handled. The FCC decided how monthly recurring charges for telecommunications and Internet services should be handled, and it decided how nonrecurring charges for internal connections should be handled, but it did not address the proper handling of recurring charges for internal connections. Although not specifically addressed, the logic of the FCC's decision, based on whether or not the charges are nonrecurring or recurring, fully supports the funding of recurring charges for internal connections during the extension period.

As the FCC stated in ¶ 13 of the Order, it amended §54.507 of its rules to implement its decision. This rule adopted by the FCC clarifies its order and is the final, binding statement of the FCC's intent, and the amended rule fully supports GCI's argument. §54.507(b) states that as an initiation mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999, would be considered a funding year and "Schools and libraries filing applications within the initial 75-day filing window shall receive funding for requested services through June 30, 1999." In these cases, all of the schools filed within the initial 75-day window, and all of the schools requested support for the server billed on a monthly recurring basis. The Form 471s clearly listed the costs as monthly recurring charges for which support was requested. The rule adopted by the FCC specifically states that the schools "shall" receive funding for "requested services" through June 30, 1999, therefore these schools "shall" receive funding for the "requested services" which include monthly recurring charges for the internal connection. The decision of the Division violates the rule by denying funding for the service for the six month extension period.

GCI's interpretation of the rule and the FCC's Fifth Order on Reconsideration, Fourth Report and Order is confirmed by the FCC's subsequent Tenth Order on Reconsideration, Released April 2, 1999. In that Tenth Order on Reconsideration, the FCC extended funding for the six month extension period for contracts that had expired prior to December 31, 1998. In discussing which services were eligible for additional funding, the FCC addressed the issue in terms of "recurring services" versus "nonrecurring services." "In extending this exemption from our competitive bidding requirements, we make it clear that additional discounts for these contracts will only be available for recurring services ...." (Paragraph 15, emphasis added).

The FCC again amended the applicable rule, §54.407(b). In the amended rule, the FCC clearly established that the relevant distinction is between "recurring services" and "nonrecurring services." The rule now states that schools "receiving approval for discounts on recurring services, shall receive funding for requested recurring services through June 30, 1999." The current rule clearly provides that all recurring services are funded through the six month extension period. The recurring service being provided by GCI to the schools is eligible under the current rules for funding for the six month extension period, at the monthly recurring rate.

Based on the foregoing, the Division's decision should be reversed. As an additional and alternative reason, GCI believes that the initial instructions of the S&L Division to list the server as an "internal connection" was in error. The server at issue is not a file server, which is specifically defined by the FCC as an internal connection. Also, while the purchase of a server like the ones at issue might be appropriately listed as an internal connection, the server provided by GCI falls more appropriately as part of the Internet service. The server, which is owned and managed by GCI, is simply part of the delivery of Internet services, including e-mail, data transmission, address translation, filtering, and other typical Internet services.[3] The filtering service allows each school customized control over the content available to students, just as many members of Congress are now suggesting as a mandatory requirement of e-rate Internet services. GCI is also aware of other schools that in fact included the server as part of the Internet service and obtained support, including support for the extension period. Given the importance that the classification as an Internet service or an internal connection has assumed with the six month extension, the earlier directions of the S&L Division should be reviewed. Reclassification of the server as part of GCI's delivery of Internet services is appropriate and, even under the Division's interpretation of the FCC's order, would render it eligible for funding during the extension period.

For all of these reasons, GCI requests the Committee to review and reverse the decision(s) of the Division.

Thank you for your consideration of these issues.

Sincerely,

James R. Jackson
Attorney

[3] The services provided fall squarely within the definition of covered Internet service set out by the FCC in the Report and Order of May 8, 1977, at Paragraph 444.

SLD Funding Notification Synopsis for SPIN: 143001199

Funding Request Number: 117410
471 Application Number: 102570
470 USCN: 969780000008587
Name of 471 Applicant: ALASKA GATEWAY SCHOOL DISTRICT
Contact Name for 471 Applicant: JOHN RUSYNIAK
Preferred Mode of Contact for Contact Person: EMAIL
Contact E-Mail Address: jrusyniak@tok.agsd.schoolzone.net
Funding Year: 1998
Funding Status: COMMITTED - FULL
Provider Contract Number: C
Services Ordered: Dedicated Services
Shared Services Indicator: Not Shared
School or Library Name for Site Specific Services:
MENTASTA LAKE SCHOOL
Earliest Possible Effective Date of Discount: 04-10-1998
Contract Expiration Date: 04-10-2001
Estimated Total Annual Pre-Discount Cost: $41535.00
Discount Percentage Approved by SLD: 90%
Funding Commitment Decision: $37381.50 471 approved as submitted
Technology Plan Approval Status: Approved

Funding Request Number: 117411
471 Application Number: 102570
470 USCN: 969780000008587
Name of 471 Applicant: ALASKA GATEWAY SCHOOL DISTRICT
Contact Name for 471 Applicant: JOHN RUSYNIAK
Preferred Mode of Contact for Contact Person: EMAIL
Contact E-Mail Address: jrusyniak@tok.agsd.schoolzone.net
Funding Year: 1998
Funding Status: COMMITTED - FULL
Provider Contract Number: C
Services Ordered: Internal Connections
Shared Services Indicator: Not Shared
School or Library Name for Site Specific Services:
MENTASTA LAKE SCHOOL
Earliest Possible Effective Date of Discount: 04-10-1998
Contract Expiration Date: 04-10-2001
Estimated Total Annual Pre-Discount Cost: $9180.00
Discount Percentage Approved by SLD: 90%
Funding Commitment Decision: $8262.00 471 approved as submitted
Technology Plan Approval Status: Approved

From: **Robert Haga [mailto:rhaga@universalservice.org]**
Sent: Thursday, June 24, 1999 4:43 PM
To: Gary Porter
Cc: Mickey Revenaugh (E-mail)
Subject: RE: Managed Server

Gary,

Mickey asked me to respond to this since it was my e-mail to Jimmy Jackson that led to your confusion. He had asked if I could give him a reference to an FCC decision that the 6 month extension for schools and libraries did not extend to internal connections? I told him that I could not as the extension of the first funding cycle until June 30 applied to all aspects of the program, telecommunications, internet access, and internal connections.
While this is correct, in that the extension applied to all aspects of the program, the FCC was clear that only priority one recurring services (telecommunications services and internet access) receive the 6-month dollar extension; priority two services (internal connections, whether one-time or recurring) were generally eligible for additional time, but no more money. This comes from paragraphs twelve and thirteen of the Fifth Recon Order (FCC 98-120) (rel. June 22, 1998):
"These services [telecommunications services and Internet access] will be funded at the approved monthly level, consistent with the information included on the school's or library's application, through June 30, 1999."
"Second, for applications ... on internal connections, the Administrator shall commit the approved amount of support, but these funds may be utilized during the remainder of 1998 as well as during the transition period through June 30, 1999."
As I now know the full scope of Jimmy's question, I have sent him this information too.
Robert Haga
USAC
202.776.0200
fax: 202.776.0080
rhaga@universalservice.org

-----Original Message-----
From: **Gary Porter [mailto:gporter@gci.com]**
Sent: Thursday, June 24, 1999 3:45 PM
To: Mickey Revenaugh (E-mail)
Subject: Managed Server

Mickey,
One of our lawyers was in contact with Robert Haga at the SLD about this issue and received conflicting information. Mr. Haga responded that the 6 month extension referred to all aspects of the program, telecommunications, Internet access, and internal connections. If this is true, then shouldn't the monthly service fee for a managed Internet server be extended for the 6 months also?

- Gary

Gary Porter
Product Manager, Commercial Internet Services GCI Communications Corp.
(907) 868-5491
gporter@gci.com <mailto:gporter@gci.com>

-----Original Message-----
From: **MickeyR@aol.com <mailto:MickeyR@aol.com> [mailto:MickeyR@aol.com]** <mailto:[mailto:MickeyR@aol.com]>
Sent: Thursday, May 20, 1999 5:35 PM
To: gporter@gci.com <mailto:gporter@gci.com>
Subject: Re: Internal Connections

Only the FCC can change the guidelines on this-they purposely and specifically set the six-month extension in place for priority one services (telecom and Internet access) and not internal connections. You may want to write directly to them requesting consideration of this policy-check the FCC web site, www.fcc.gov <http://www.fcc.gov> , for address, etc. You were right to list your managed server as internal connections-we would have had to reclassify it as such if you hadn't. I'm sorry that we can't be of more help in getting the additional funds your customers may need, but we only implement policy on this one, not make it.
All best-
Mickey Revenaugh

-----Original Message-----
From: **Gary Porter**
Sent: Thursday, May 20, 1999 3:50 PM
To: Mickey Revenaugh (E-mail)
Cc: Martin Cary; David Porte
Subject: Internal Connections

Mickey,
We have an issue with the way that the SLD has handled one aspect of the 6-month extension to June 30 for the initial year. Schools are not receiving a discount during the 6-month extension for a service we provide to many schools. I am hoping you could address this problem or direct me to someone who can address this. GCI has many Internet customers who have contracted with us to provide a managed server. This server is providing email, web, proxy, and security to enhance their Internet connection. These schools are new to computer Internet technology and to not have in-house technology coordinators to support them. We remotely manage their servers and provide a help desk function. These were listed on the Form 471 as an internal connection as per the list of eligible services and from advice from the SLD help desk.
The funding commitment letters have extended the monthly price to include the additional 6 months (Jan 1 - June 30) for telecommunications and Internet services, but not for internal connections. Since the monthly recurring price for the managed server was listed as an internal connection, it was not extended to take in account the additional 6 months.
Is there anything that GCI can do to have this reconsidered? I would appreciate any guidance you can provide.
Thanks,
- Gary

Gary Porter
Product Manager, Commercial Internet Services GCI Communications Corp.
(907) 868-5491
gporter@gci.com <mailto:gporter@gci.com>

EXHIBIT 2

September 1, 1999

Ellen Wolfhagen, Esq.
Schools and Libraries Committee
Universal Services Administrative Co.
2120 L. Street NW, Suite 600
Washington, DC 20037

Dear Ellen:

As we discussed, attached is a copy of GCI's Appeal of Funding Decisions previously filed on July 1, 1999. All attachments to the Appeal are included. I will mail an original copy to conform your file.

We have discussed the question of whether or not GCI's Appeal was timely filed in accordance with §54.720. There are several different reasons that I believe the Appeal was filed on a timely basis.

First, GCI is appealing the decision dated June 24, 1999, and the Appeal was filed within 30 days of that date. The June 24, 1999, decision (attached to the Appeal of Funding Decisions) was the first explanation, and thus notice, to GCI of the basis of the S&L Division's reasons for the funding discrepancy. Prior to that time, GCI had no explanation of the Division's reasons for the funding shortfall, and GCI would have been unable to file any appeal because GCI did not know what it would have been asking the Committee to review. The funding commitment letters themselves did not include any decision which informed GCI what needed to be appealed, and thus did not afford GCI meaningful notice and opportunity to be heard.

Second, GCI continues to receive "486 Letters" for each of the cases at issue. In almost every instance, GCI's appeal letter of July 1, 1999, was filed either within 30 days after receipt of the 486 Letters or even prior to receipt of the 486 Letter. A list of the 486 Letters received 30 days prior to our appeal letter, or after the appeal letter, is attached. Thus, GCI's appeal letter of July 1, 1999, is a timely appeal of any decision implied by the contents of these 486 Letters. To the

extent any formal action is necessary, this letter should be considered an appeal of those 486 Letters, based on the reasoning previously set out in our letter of July 1, 1999.

Finally, the FCC's recent decision in the Tennessee case (FCC Application No. 18132, CC Docket No. 96-45/97-21 (August 11, 1999)) provides an additional reason to allow GCI's appeal to proceed. The issue in GCI's appeal arises only because the S&L Division required GCI to include recurring charges for its Internet server as charges for an internal connection. The FCC has determined that the S&L Division was incorrect and that servers may be included as part of Internet access in certain circumstances (which would be met by the servers GCI is using to provide qualifying schools with Internet service). As we discussed, most of these schools are served directly by satellite; there is neither an existing ISP in the community nor a fiber network, as is taken for granted in the rest of the country, thus making the server location in the school a matter of necessity. It would be inequitable to deny these school districts the opportunity to demonstrate that the charges they are paying for servers should not have been classified by the S&L Division as internal connections.[1]

Thank you for your time and attention to these matters. It seems appropriate that the delivery of Internet service to the most remote parts of rural America should merit such attention.

Sincerely,

Mark Moderow
Corporate Counsel

[1] The classification as an internal connection is only one basis of the appeal filed by GCI. Additionally, GCI appealed based on the fact that the charge was a recurring charge, not a non-recurring charge, and was thus eligible for additional funding during the six month extension period pursuant to the currently effective regulation, §54.507(b). The continuing 486 Letters are clearly not in accordance with the current regulation.

School District	486
Aleutian East Borough	08/04/99
Bering Strait	08/18/99
Delta-Greely	08/11/99
Iditarod	08/25/99
Lower Yukon	08/04/99
Mount Edgecumbe	06/30/99
Nenana City	08/18/99
Northwest Arctic Boro	08/18/99
Southwest Region	08/04/99
Tanana City	08/18/99
Yukon Flats	08/11/99
Yukon-Koyukuk	08/18/99
Yupiit	08/04/99

EXHIBIT 3

Mark Moderow

From: ewolfhagen@universalservice.org
Sent: Thursday, March 01, 2001 8:19 AM
To: mmoderow@gci.com
Subject: RE: July 1, 1999 S & L appeal?

Mark: My apologies for not getting back to you sooner. Your original appeal letter was treated as an "applicant" appeal and so the letter(s) indicating that it was not timely filed (as it was dated more than 30 days after the Funding Commitment Decision Letter). I know that there are two problems with that: (1) that you were not copied on the letters to the applicants; and (2) that your letter challenged the 30 days for appealing, because you said you had no reason to know that you had to appeal until the billing started. When you and I had originally spoken about these appeals (back in August 1999) I gave you the heads up that I thought the 30 days would be an issue.

Please let me know if you have any further questions.

Ellen Wolfhagen
Director, Service Provider Support

-----Original Message-----
From: Mark Moderow [mailto:mmoderow@gci.com]
Sent: Monday, February 26, 2001 8:26 PM
To: 'ewolfhagen@universalservice.org'
Subject: RE: July 1, 1999 S & L appeal?

Ellen:
It seems that a decision should have been made. Is there something else needed from us? Please call as to status, at (907) 265-5664.
Mark Moderow

> -----Original Message-----
> From: Mark Moderow
> Sent: Thursday, January 11, 2001 11:51 AM
> To: 'ewolfhagen@universalservice.org'
> Subject: July 1, 1999 S & L appeal?
>
> Ellen:
> This is an inquiry as to the status of our July 1, 1999 appeal of funding decisions, generally regarding the "internal connection"/"recurring v. nonrecurring"/ "18 month" issues as to 83 schools located in the most remote areas of Alaska. As this appeal has been pending for over 18 months, it seems that a decision applying the clear and effective FCC orders and rules should be forthcoming. Thank you for your attention to this matter.
>
> Mark Moderow, Corporate Counsel
>
> General Communication, Inc.
>
> 2550 Denali Street, Suite 1000
>
> Anchorage, AK 99503
>
> (907) 265-5664
>
> e-mail: mmoderow@gci.com

EXHIBIT 4

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Request for Review by General Communication, Inc.,)	FCC Docket Nos.
Of Decision of Universal Service Administrator)	97-21 and 96-45

AFFIDAVIT OF MARTIN CARY

After being duly sworn, Martin Cary states as follows:

1. I am Martin Cary and I am GCI's Vice President of Broadband Services. GCI's provisions of service to Schools and Libraries pursuant to the Commission's universal service program has been within my department since the service began. I am generally familiar with how GCI provides the service and the rules and regulations governing the service.

2. GCI is a diversified telecommunications company that provides many services in Alaska, including Internet service. GCI was selected by numerous schools in Alaska to provide Internet service to their schools pursuant to the "e-rate" program. GCI's Internet service to the subject schools includes e-mail, data transmission, address translation, and other typical Internet services.

3. In order to provide Internet service to the schools, GCI located a server on the school premises. The server, which is GCI's point of presence, was located on the school premises for several reasons. All of the subject schools are in extremely remote villages in rural Alaska, and GCI does not provide retail, commercial

GCI Communication Corp.
2550 Denali Street, Suite 1000
Anchorage, AK 99503
(907) 265-5600

Internet service to residents of the villages (other than the service to the school). Furthermore, the Internet service to the schools is delivered via satellite, and locating the server on the school premises greatly improves performance.

4. The servers have absolutely no function or purpose other than providing Internet service to the schools. GCI, not the schools, owns the servers. There is no lease-purchase arrangement. GCI maintains the servers as part of the service. The schools did not pay any upfront capital costs for the servers. As is normally the case for services, the charge for Internet services provided by the server is a monthly recurring charge.

5. Furthermore, the servers are not necessary (or even used) to transport information within the schools. The schools' internal networks are separate from, and do not rely in any way upon, the servers. The servers do not provide any internal service such as file or print services.

6. In summary, the servers are simply part of the end to end Internet service provided by GCI. I have read the relevant portions of the Commission's State of Tennessee decision, and I believe that all of the criteria and indicia established by the Commission in that case unquestionably support classification of these servers as part of the Internet service, not internal connections.

7. The Internet servers were listed as "internal connection" on Form 471 because of the advice given to my staff by the S&L Help Desk. At that time the program was very new, and we relied on the Help Desk for direction in many instances.

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Anchorage, AK 99503
(907) 265-5600

Also, at that time GCI was not aware of any significance to listing the servers as internal connections rather than as part of the Internet service.

8. When we received copies of the funding commitment letters for the subject schools, we believed the applications had been fully funded. The language on the letters indicated that the funding was fully approved. Neither myself or any person on my staff had any understanding from the funding commitment letters that all of the recurring charges had not been fully funded for all of Program Year One. Only months later, when our accounting department was reviewing the amounts for internal purposes did we discover a discrepancy between the stated funding levels and the amount we should have received to cover the entire 18 months of Program Year One.

9. Upon learning of the discrepancy, Gary Porter of my staff promptly inquired to determine the reasons. Copies of his e-mails attempting to obtain an explanation are attached to the appeal submitted to the S&L Committee. We did not get any logical explanation until June 24, 1999.

DATED this 26th of March, 2001.

Martin Cary

SUBSCRIBED AND SWORN to me this 26th day of March, 2001.

NOTARY PUBLIC FOR ALASKA

Saundra A. Knox

My Commission Expires Oct 6, 2002

OFFICIAL SEAL
STATE OF ALASKA
NOTARY PUBLIC
SAUNDRA A. KNOX
My Comm. expires: October 6, 2002

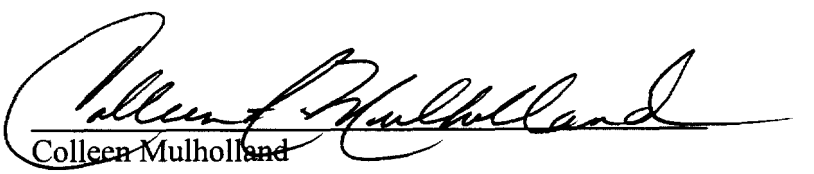
GCI Communication Corp.
2550 Denali Street, Suite 1000
Anchorage, AK 99503
(907) 265-5600

CERTIFICATE OF SERVICE

I, Colleen A. Mulholland, hereby certify that a copy of the foregoing Request for Review of Administrator's Decision by General Communication, Inc. was delivered by first-class mail to each of the following parties as indicated on March 29, 2001.

Schools and Libraries Committee
Universal Service Administrative Co.
2120 L Street NW, Suite 600
Washington, D.C. 20037

Schools and Libraries Committee
Box 125, Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981



Colleen Mulholland